BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant : ISTVAN SIMON

Serial No.: 09/136,820

Filed : August 19, 1998

For : LIQUID POWER MACHINE

Docket No.: 98-370

Examiner : N.Ponomorenko

Art Unit : 2834

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Suite 1201
New Haven, CT 06510-2802

APPEAL BRIEF UNDER 37 CFR 1.192

Hon. Commissioner of Patent & Trademark
United States Patent & Trademark Office
Washington, DC 20231

Dear Sir:

This is an appeal from the Examiner's final rejection dated August 2, 2001.

REAL PARTY IN INTEREST

The real party in interest in this case is Istvan Simon, the inventor.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1-19 are pending and appealed.

STATUS OF AMENDMENTS

There are no amendments filed subsequent to the final rejection from which appeal has been taken.

SUMMARY OF INVENTION

The invention relates to a water power machine which operates with a comparatively small amount of flowing water (see for example line 7 of the Abstract) as an energy input means for providing energy to the drive of the liquid power machine.

The invention is set forth in independent claim 1 and comprises:

(1) a drive means (11), (see Page 4, lines 14-18)

(2) an energy input means for providing energy to the drive means comprising a flowing water source, (see paragraph bridging Pages 12 and 13 of the instant specification)

(3) a drive output means (12), (see for example Page 4, lines 14-18)

(4) a lever drive assembly (13) by way of which the drive means and the drive output means are in engagement with each other (again, see Page 4 for example).

Dependent claims 2-19 contain further details of the components of the liquid power machine of claim 1.

ISSUES ON APPEAL

The following issues are raised by this appeal:

(1) Whether claims 1-19 comply with the formal requirements

of 35 USC 112, first paragraph.

(2) Whether claims 1-19 comply with 35 USC 112, second paragraph.

(3) Whether claims 1-19 are properly rejected under 35 USC 101 as inoperative.

GROUPING OF CLAIMS

All of the issues (1)-(3) as articulated above are made with regard to the sole independent claim 1 and, accordingly, claim 1 need be the only claim discussed in the instant appeal.

ARGUMENT

With respect to issue 1, the rejection of claim 1 under USC 112, first paragraph, it is submitted that the specification is enabling. The Examiner in his final rejection apparently believes that there is no support in the instant specification for the energy input means as claimed in independent claim 1. In this regard the Board of Appeals' attention is drawn to the paragraph bridging Pages 12 and 13 of the instant specification. This portion of the specification clearly sets forth the energy input means which is being claimed in independent claim 1. That portion of the specification clearly sets forth that "...the weight difference necessary for the upward and downward movement of the cascade assembly is afforded by overfilling of a cascade assembly in relation to the other (with water from a flowing source such as, for example, a waterfall)...". This portion of the

specification clearly provides not only enablement but also positive support for the claimed energy input means of independent claim 1. Accordingly, the Examiner's rejection based on 35 USC 112, first paragraph for non-enabling specification must be withdrawn.

Issue 2 deals with claim 1's compliance with 35 USC 112, second paragraph. The Examiner in his Interview Summary Record dated August 14, 2001 stated that "In present form claim 1 is incomprehensible". Appellant believes this to be an objection or rejection of claim 1 under 35 USC 112, second paragraph. Appellant submits that there is nothing incomprehensible about claim 1. As noted above, in the portion entitled SUMMARY OF INVENTION the words of claim 1 find antecedent basis in the specification. All of the elements of claim 1 are clearly set forth in the specification in terms identical to those used in claim 1 itself. Accordingly, claim 1 cannot be said to be incomprehensible or indefinite under 35 USC 112, second paragraph.

Issue 3 deals with the propriety of the Examiner's rejection of claim 1 under 35 USC 101 as being inoperative. Appellant believes that the Examiner's rejection is clearly in error. The Examiner would like to characterize the claimed subject matter of claim 1 as a "perpetual motion machine". This however is clearly not the case as the liquid power machine of claim 1 clearly sets forth an energy input means in the form of a flowing water source. Thus, there is an energy input means and clearly the

liquid power machine as claimed is not a perpetual motion machine.

In light of the foregoing it is submitted that the Examiner's position, as stated in his final rejection, is in error and must be reversed.

CONCLUSION

The Examiner has improperly rejected claims 1-10 under 35 USC 112, first paragraph. In addition, the Examiner has improperly rejected claims 1-19 under 35 USC 112, second paragraph. Finally, the Examiner has improperly rejected claims 1-19 under 35 USC 101 based on non-enablement and being drawn to a perpetual motion machine. The Examiner's rejections should be reversed.

REQUEST FOR ORAL HEARING

Appellant requests an oral hearing in the above case.

APPEAL BRIEF FEE AND ORAL HEARING FEE

Appellants enclose herewith a check in the amount of $580.00 to cover the cost for the fee for this Appeal Brief and the Oral Hearing fee.

If any additional fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

APPENDIX

Attached hereto is an appendix containing a copy of claims 1-19, all of the claims on appeal.

Respectfully submitted,

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Date: April 30, 2002

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D. C. 20231

on April 30, 2002
(Date of Deposit)

Lori J. Larson
Name and Reg. No. of Attorney

_____
Signature

4-30-02
Date of Signature

APPENDIX

1. A liquid power machine comprising

a drive means,

an energy input means for providing energy to the drive means comprising a flowing water source,

a drive output means, and

a lever drive assembly by way of which the drive means and the drive output means are in engagement with each other.

2. A machine according to claim 1

wherein the drive means includes a hydraulic motor, a direction converter co-operable with the hydraulic motor and a conveyor arrangement for lifting liquid from a lower level to an upper level.

3. A machine according to claim 2

wherein the hydraulic motor includes:

a) a liquid container for containing a liquid with a buoyancy body accommodated in the liquid container and adapted to be immersed in the liquid therein,

b) first and second cascade assemblies,

c) means for positively guiding the cascade assemblies in their opposite directions of movement,

d) a thrust rod connecting the cascade assemblies to the buoyancy body,

e) an upper liquid container for conveying liquid to the cascade assemblies and and a lower liquid container for the discharge of liquid from the cascade assemblies, and

f) a connecting rod which is movably connected to the buoyancy body and which is in operative engagement with the direction converter.

4. A machine according to claim 3

wherein the buoyancy body includes a core of honeycomb configuration.

5. A machine according to claim 3 including

a support and pivtal lever for holding the buoyancy body in guided relationship in the liquid container.

6. A machine according to claim 3

wherein the first cascade assembly and the second cascade assembly each have pivotal containers,

and further including a carrier device on which the cascade assemblies are arranged at a vertical spacing from each other and in mutually partially interengaging relationship.

7. A machine according to claim 3

wherein the first cascade assembly has a feed container and the upper liquid container has a through-flow opening adapted to be intermittently opened and closed.

8. A machine according to claim 3

wherein the drive means has a first shaft, and the converter has a drive wheel, a shaft carrying the drive wheel and supported on both sides, means non-rotatably connecting the drive wheel to the free front end of the connecting rod and a driven wheel fixedly connected to the first shaft of the drive means, wherein the drive wheel and the driven wheel are in rotational engagement with each other.

9. A machine according to claim 8

wherein the first shaft is supported at one end non-rotatably in the free front end of the connecting rod and at the other end rotatably in a mounting disc, wherein the mounting disc is rotatably in engagement with the shaft.

10. A machine according to claim 9

wherein the drive wheel and the driven wheel are arranged between the connecting rod and the mounting disc.

11. A machine according to claim 2

wherein the drive means comprises a shaft and the conveyor arrangement includes a conveyor wheel non-rotatably connected to the shaft of the drive means, for conveying liquid from a lower liquid container into an upper liquid container.

12. A machine according to claim 11 wherein the conveyor wheel carries containers arranged in a uniformly distributed relationship at its periphery.

13. A machine according to claim 12

wherein the conveyor arrangement includes control levers operatively connected to respective ones of the containers, and a control plate co-operable with the control levers for pivoting the containers when passing over the upper container.

14. A machine according to claim 1

wherein the drive means has a first shaft and the drive output means has a second shaft which is separate from the first shaft of the drive means, the second shaft being in axial alignment with the first shaft.

15. A machine according to claim 14

wherein the lever drive assembly is arranged between the driven-side end of the first shaft and the drive-side end of the second shaft.

16. A machine according to claim 15

wherein the lever drive assembly comprises a driving portion and a driven portion, wherein the driving portion includes

a) a drive lever fixedly arranged at the driven-side end of the first shaft,

b) a carrier arm with a driver which is supported at both sides and which is fixedly arranged at the free front end of the carrier arm, the carrier arm being in rotational engagement with the drive lever,

c) a mounting disc freely rotatably arranged on the second shaft,

and the driven portion comprises

d) a rotary body fixedly arranged on the drive-side end of the second shaft.

17. A machine according to claim 16

wherein at its free end the drive lever carries a journal which rotatably engages through the carrier arm and having a drive-side end which is rotatably accommodated in the drive lever and a driven-side end which is rotatably accommodated in the mounting disc, wherein the driver has the journal non-rotatably extending therethrough.

18. A machine according to claim 16

wherein the driven portion and the driver are in engagement with each other by means of a tooth arrangement.

19. A machine according to claim 1 including

a carrier device,

a carrier lever mounted to the carrier device,

wherein at its end opposite to the driver the carrier arm is pivotably arranged by means of the carrier lever on the carrier device.